

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

RAYMOND WILLIAM SCHMAL,

Plaintiff,

v.

Civ. No. 20-1324 CG/GJF

LUNA COUNTY, et al.,

Defendants.

**ORDER GRANTING MOTIONS TO PROCEED IN FORMA
PAUPERIS AND FILE ELECTRONICALLY AND ORDER FOR SERVICE**

THIS MATTER is before the Court on pro se Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs [ECF 2] and Application for Permission to File Electronically [ECF 5].

I. APPLICATION TO PROCEED *IN FORMA PAUPERIS*

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 Fed.Appx. 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962)). “The statute [allowing a litigant to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs. . . .” *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 344 (1948). While a litigant need not be “absolutely destitute,” “an affidavit is sufficient which states that one cannot because of his poverty pay or give security

for the costs and still be able to provide himself and dependents with the necessities of life.” *Id.* at 339.

The Court will **GRANT** Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs [ECF 2]. Plaintiff signed a declaration stating he is unable to pay the costs of these proceedings and provided the following information: (1) Plaintiff’s total monthly income is \$820.00 in wages and additional income from weed removal/yard clean-up, and (2) Plaintiff’s monthly expenses total \$1,004.00 not including food. The Court finds that Plaintiff is unable to pay the costs of this proceeding because he signed a declaration affirming his inability to pay such costs and because his monthly expenses exceed his low monthly income.

II. ELECTRONIC FILING

Plaintiff requests permission to participate in electronic filing in this case and states that he has “regular access to the technical requirements necessary to e-file successfully.” ECF 5 at 1.

The Court will **GRANT** Plaintiff permission to file electronically in this case only. *See* Guide for Pro Se Litigants at 13, District of New Mexico (November 2019) (stating that “approval to electronically file documents within a case must be granted by the presiding judge for each case in which the *pro se* litigant wishes to file using their CM/ECF account”). The Court, however, may revoke permission to file electronically if Plaintiff abuses his electronic filing privilege or fails to comply with the rules and procedures in the District of New Mexico’s Guide for Pro Se Litigants and the District of New Mexico’s CM/ECF Administrative Procedures Manual. Account registration forms, procedure manuals, and other information can be obtained at the Court’s website at www.nmd.uscourts.gov/filing-information. This Order only grants Plaintiff permission to participate in CM/ECF; Plaintiff is responsible for registering to become a participant. *See* CM/ECF Administrative Procedures Manual, District of New Mexico (revised December 2019).

III. SERVICE

Plaintiff is proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915, which provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”). § 1915(d). Because Plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915, the Court will order the Clerk of the Court to serve Defendant Luna County with a summons and a copy of the Complaint pursuant to Fed. R. Civ. P. 4(j)(2) and to notify the other Defendants, at the addresses provided by Plaintiff, that an action has been commenced and request that Defendants waive service pursuant to Fed. R. Civ. P. 4(d), except that the Clerk shall not serve Defendants Luna County Sheriff’s Department and Luna County Animal Control Shelter because they are not separate suable entities. “Generally, governmental sub-units are not separate suable entities that may be sued under § 1983.” *Hinton v. Dennis*, 362 Fed.Appx. 904, 907 (10th Cir. 2010) (*citing Martinez v. Winner*, 771 F.2d 424, 444 (10th Cir. 1985) (holding that City and County of Denver would remain as a defendant and dismissing complaint as to the City of Denver Police Department because it is not a separate suable entity). The Court cannot order service on the unknown Defendants.

IV. CONCLUSION

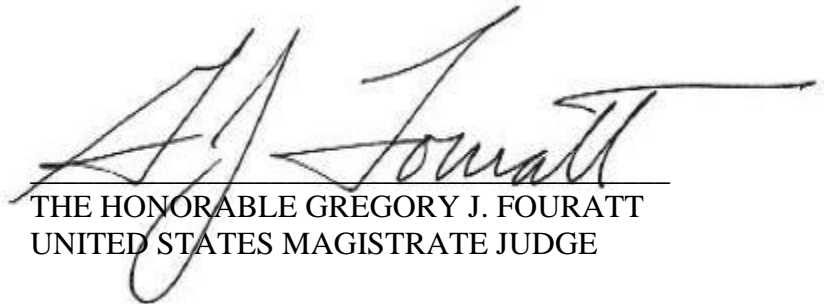
IT IS THEREFORE ORDERED that both Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or [ECF 2] and Plaintiff’s Application for Permission to File Electronically [ECF 5] are **GRANTED**.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve Defendant Luna County by delivering a copy of the summons and a copy of the Complaint to Luna County’s chief executive officer.

IT IS FINALLY ORDERED that the Clerk of the Court shall notify Defendants Deming

Animal Guardians, Michael Brown, Luis Molina, Sandy Foster, Tammy McCoy, and Mike Reitz, that an action has been commenced and request that Defendants waive service pursuant to Fed. R. Civ. P. 4(d). The notice shall include a copy of Plaintiff's Complaint [ECF 1]. The Clerk shall mail the notice, waiver and a copy of the Complaint to these Defendants at the addresses provided by Plaintiff in the Complaint. If the docket shows that any of these Defendants did not return the waiver within 45 days after such service, then Plaintiff shall file a motion requesting that officers of the Court serve a copy of the Summons and Complaint on Defendant.

SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE